



CLIMATE**FOCUS**

# Legal Issues: CDM and JI transactions

Workshop: “CDM and JI - Chances for German Technologies”

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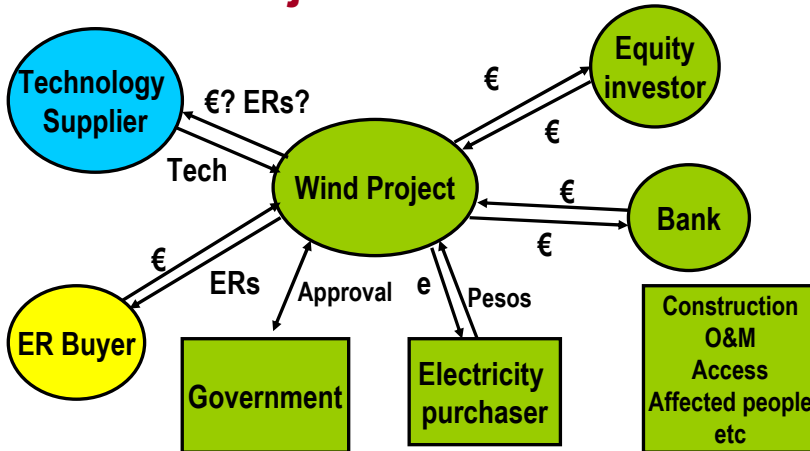
## Overview

- Overview of Project Structure
- Emission Reduction Purchase Agreements
  - Price
  - Volume and Delivery
  - Remedies
- Technology Supply

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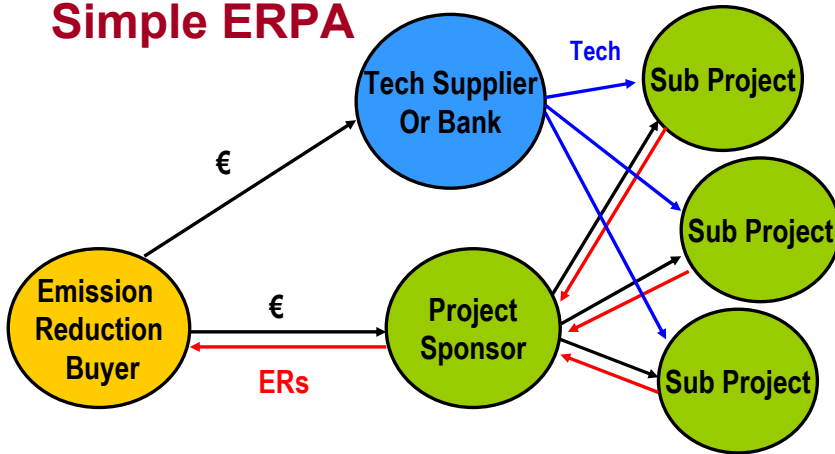
## CDM/JI Project Structures



## Emission Reductions Purchase Agreements (ERPAs)



## Simple ERPA



## ERPA: Overview

- To date Buyer/Seller relationship most common form of transferring Emission Reductions in CDM/JI projects
- Long term off-take agreement vs. spot contracts
- Can be combined with other relationships
  - Common issues



## ERPA: Issues and Terms

### General Issues

- Allocation of risks
- Allocation of responsibilities
- Identification of rights and obligations

### Key Terms

- Price
- Volume and delivery
- Damages/default
- Monitoring and Verification



## Price: Fixed Price

*“The Buyer agrees to pay the Seller **€X for each CER** delivered to the registry account of the Buyer before 1<sup>st</sup> March, 2013”*



## Price: Simple Indexed Price

*“The Buyer agrees to pay the Seller **X% of the Market Price of an EU Allowance** for each CER delivered into the registry account of the Buyer before 1<sup>st</sup> March 2013”*

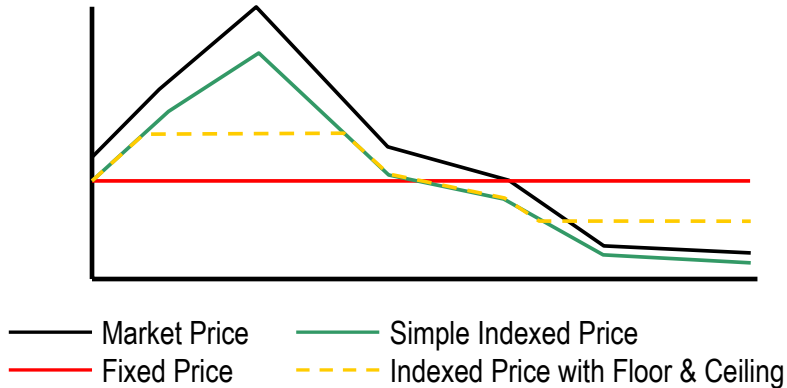


## Price: Indexed Price with Floor and Ceiling

*“The Buyer agrees to pay the Seller **X% of the Market Price of an EU Allowance** for each CER delivered into the registry account of the Buyer before 1<sup>st</sup> March 2013, except that irrespective of the Market Price of an EU Allowance the price paid for each CER shall **never be greater than €X** per CER and shall **never be less than €X per CER**”*



## Price: Different Approaches in Practice



## Pricing: Factors that Affect the Starting Price

- Bargaining
- Demand
- Timing of payments
- Timing of delivery
- Delivery “guarantees”/ remedies for under delivery
- Who pays share of proceeds for EB admin expenses (\$0.10/0.20 per CER)
- Risks
  - Regulatory (baseline, additionality, registration)
  - Project (underlying project risks inc. technology, financing etc)
  - Host country (LoA)
  - Counter party (capitalization, experience)
  - Reputation (resettlement?)
- Who pays which taxes



## Volume and Delivery

- When
- Where (to an from)
- How
  - primary transfer (Art. 6/12)
  - secondary transfer (Art.17)
  - Communication rights with the EB (CDM)
- How much
  - CDM: share of proceeds for adaptation (2%)
- Seniority



## Fixed Annual Volume

*“Before the 1<sup>st</sup> February each year the Seller agrees to deliver the first X CERs generated by the Project in the previous Year into the registry account nominated by the Buyer”*



## Fixed total amount with “Acceleration”

- Combined with seniority and fixed total delivery obligations

*“Before the 1<sup>st</sup> February each year the Seller agrees to deliver 100% of the CERs generated by the Project in the previous Year into the registry account nominated by the Buyer until a total of X CERs have been delivered”*



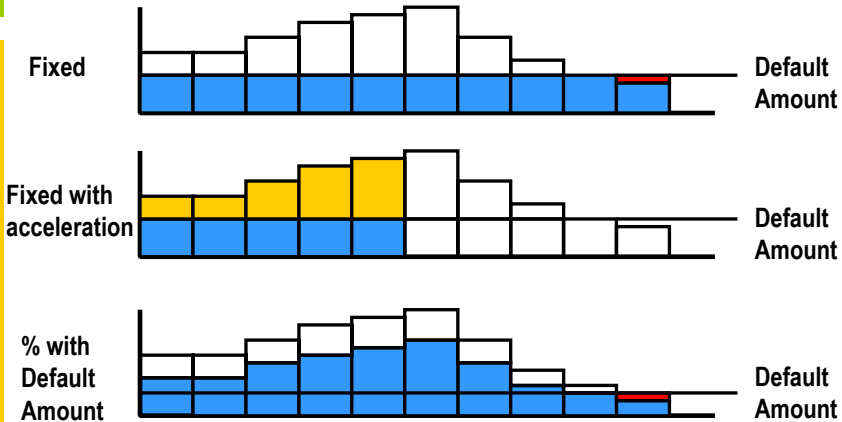
## Percent: Total and Annual

*“Before the 1<sup>st</sup> March 2008 the Seller agrees to deliver X% of the CERs generated by the Project before 1<sup>st</sup> January 2008 into the registry account of the Buyer”*

*“Before the 1<sup>st</sup> February each year the Seller agrees to deliver % X of the CERs generated by the Project in the previous Year into the registry account nominated by the Buyer”*



## Volume and Delivery: Fixed vs. %



## Remedies: Delivery Default

*"If the Seller fails to deliver the Default Amounts the Buyer may;*

*Require the Seller to provide **replacement CERs** to the Buyer*

*Recover **damages** from the Seller*

*Require the Seller **deliver additional CERs in the following Year** in an amount equal to the difference between the amount delivered and the Default Amount*

***Terminate the Agreement** and recover from the Seller any outstanding Advance Payment and other outstanding costs plus interest of X%."*



## Remedies: Payment default

*“In the event of a Payment Default **interest** payable to the Seller shall accrue to the Buyer at a fixed rate of X% per annum*

*If the Buyer has not remedied a Payment Default within the cure period, the Seller may **recover damages** from the Buyer*

*If the Buyer has not remedied a Payment Default within the cure period, the Seller may **recover CERs** already delivered to the Buyer but not paid for*

*If the Buyer has not remedied a Payment Default within the cure period, the Seller may **terminate the agreement**”*

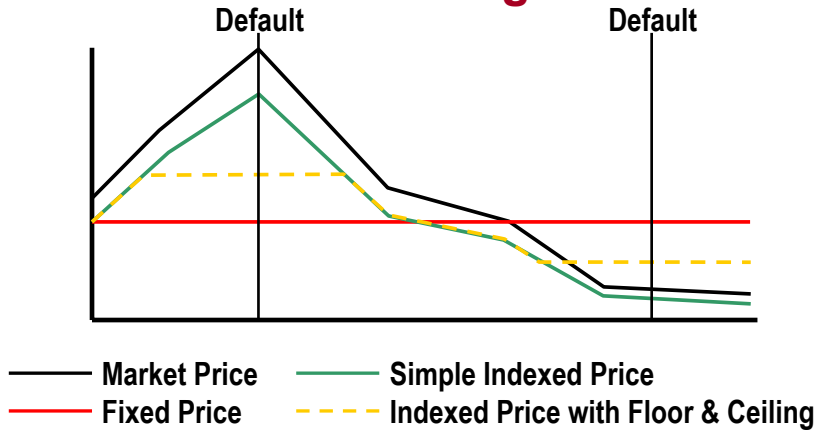


## Remedies: Intentional Breach

- Normally have strict damages remedies for defaults that are the result of intentional misconduct or gross negligence



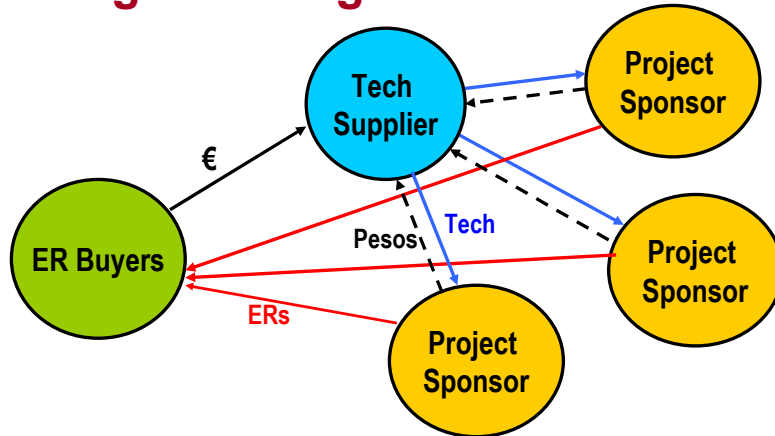
## Remedies and Pricing



## Technology Supply



## Taking advantages of CDM/JI #1

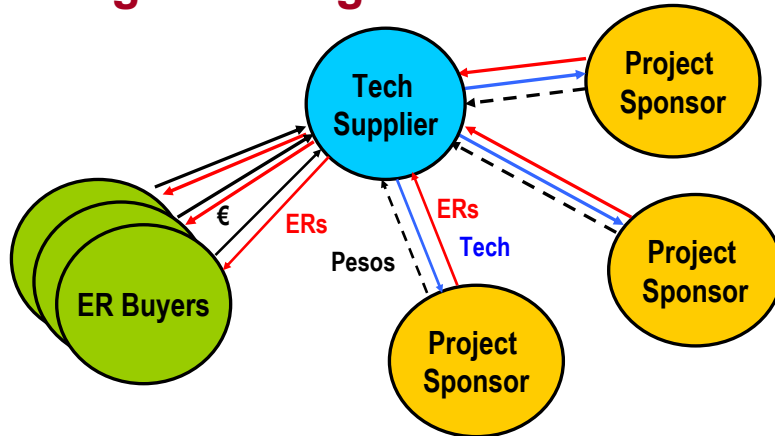


## Issues

- Hard currency payments from buyer used to (help) pay for technology
  - Timing of transfer of title to technology
  - Enables partnership between technology supplier and CER/ERU buyer
- Requires commitment to support ongoing operation of project



## Taking advantages of CDM/JI #2



## Issues

- Technology supplier acts as trader
  - Supplies tech. at reduced cost/free in return for receiving ERs (timing of transfer of title, local law)
  - Responsible for selling CERs/ERUs
  - Receives hard currency payments from sale of CERs/ERUs
  - Increased exposure to market fluctuations
  - Requires pooling and trading strategy
  - E.g. AgCert (free tech) Nepal Biogas (reduced cost tech)
- Requires commitment to support ongoing operation of project



## Conclusions

- There are lots of different structures
- That contain a lot of issues

BUT

- There are lots of different solutions
- There are lots of people who can help!



## Questions?

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